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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re MICHAEL T. et al., Persons Coming
Under the Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

BONNIE T.,

Defendant and Appellant.

D062326

(Super. Ct. No. SJ11674A-B)

APPEAL from a judgment of the Superior Court of San Diego County, David B. Oberholtzer, Judge. Affirmed.

Bonnie T. appeals a judgment declaring her minor children, Michael T. and Makayla T., dependents of the juvenile court and removing them from her custody. Bonnie challenges the sufficiency of the evidence to support the court's dispositional order as to Makayla. She also contends the court abused its discretion by requiring her to

participate in a substance abuse treatment program as part of her reunification plan. We affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

In June 2011, Bonnie was arrested for driving under the influence of alcohol while she had three-year-old Makayla in the car. Bonnie was charged with willful cruelty to a child, placed on probation and ordered to complete a 52-week child endangerment program and attend Alcoholics Anonymous (AA) meetings.

On April 30, 2012, the San Diego County Health and Human Services Agency (Agency) received a referral about a domestic violence incident involving 15-year-old Michael. Bonnie and Michael were arguing in Makayla's presence. Michael said Bonnie was going "crazy," calling him names and threatening to throw things. They physically struggled over Makayla, who told Michael she was scared. The police arrived and saw a broken table on the front porch and heard plates breaking. The police also heard Bonnie yelling and screaming at Michael and accusing him of being drunk. Michael was calm and did not appear intoxicated. Bonnie was uncooperative and confrontational. She was confused and appeared to be under the influence of alcohol. Michael said he was tired of the stressful living conditions and wanted to leave home.¹

Bonnie signed a safety plan allowing Michael and Makayla to live with their adult sister, Natasha G., during Agency's investigation. Natasha told the social worker that Bonnie had a history of methamphetamine use and had been struggling with mental

¹ Michael had previously been removed from Bonnie's custody because of her mental health and substance abuse issues.

health issues for a long time. Michael reported Bonnie had a history of methamphetamine and alcohol abuse, as well as mental health issues.

Both Natasha and Michael believed Bonnie had relapsed a few days before the April 30 domestic violence incident. Bonnie left Michael, Makayla and Natasha's daughter home alone overnight while she went to a bar. The next morning, Natasha noticed Bonnie's pupils were dilated.

The social worker interviewed Makayla, who reported being scared around Bonnie because she spanked her with a belt and it hurt. Makayla said Bonnie and Michael fought a lot, describing how Bonnie kicked Michael and Michael pushed Bonnie, hurting her. Makayla said she got out of the way of the fighting, but declined to say how it made her feel.

The social worker interviewed Bonnie, who blamed Michael for the April 30 domestic violence incident and said he had anger issues. She denied using drugs or alcohol around that time. She denied having alcohol in her home, even though there was an open bottle of wine in her living room. Bonnie initially denied having a history of drug abuse, but later admitted she had attended about five drug treatment programs. Bonnie reported using methamphetamine in 2011, as well as having issues with drinking. According to Agency's records, Bonnie had a substance abuse history dating to 1989. Bonnie admitted she had not attended the parenting classes and AA meetings as required by the conditions of her probation for the drunk driving conviction.

During the interview, the social worker noticed Bonnie could not stay focused and had scattered thoughts. Bonnie's behavior became increasingly abnormal. Toward the

end of the interview, Bonnie appeared to be talking to herself or hearing voices. She initially denied having mental health issues, but then said she was seeing a psychiatrist and taking Seroquel to help her sleep. The social worker received a note from Bonnie's psychiatrist indicating she had been prescribed Seroquel and two other drugs for her diagnoses of major depressive disorder with psychotic features and generalized anxiety disorder.

During a follow-up interview, Bonnie again denied having a substance abuse history, stating she had not used drugs or alcohol for more than 10 years. She did not know why Makayla had been removed from the home, stating Michael was the abusive one. Bonnie said Michael spent too much time at school and did not help her enough with household chores. She said Michael "cannot control my life if I want to stay in a hotel overnight and listen to karaoke." In the social worker's opinion, Michael had taken on a parentified role as shown by his acute awareness of Bonnie's substance abuse and mental health issues, his responsibility for the care of four-year-old Makayla, his contribution to household expenses and his feeling that Bonnie was emotionally dependent on him after the death of Makayla's father and the maternal grandmother.

On May 15, 2012, Agency filed a petition in the juvenile court under Welfare and Institutions Code section 300, subdivision (b),² alleging Michael and Makayla were at substantial risk of harm as a result of Bonnie's mental illness. The court detained them in out-of-home care and ordered liberal supervised visits for Bonnie.

² Statutory references are to the Welfare and Institutions Code.

At a contested jurisdiction and disposition hearing, the court received in evidence Agency's reports and admitted the stipulated testimony of social worker Eileen Lapid stating the University of California, San Diego Gifford Clinic (Gifford Clinic) was a program to treat comorbid substance abuse and mental illness. The court received in evidence a certificate showing Bonnie had completed a 52-week parenting program, which was a component of her 2011 probation. Evidence was also received showing Bonnie had recently submitted to two drug tests, and the results were negative. After considering the evidence and arguments of counsel, the court sustained the allegations of the petitions, removed Michael and Makayla from parental custody and placed them with a relative. The court ordered reunification services for Bonnie, and found her case plan, including a substance abuse assessment at the Gifford Clinic, was appropriate, reasonable and likely to alleviate the problems that led to court intervention.

DISCUSSION

I

Bonnie challenges the sufficiency of the evidence to support the court's order removing Makayla from her custody under section 361, subdivision (c). She asserts Makayla was not at substantial risk of harm in her custody and there were reasonable means to protect her without removal.

A

Before the court may order a child physically removed from his or her parent, it must find, by clear and convincing evidence, the child would be at substantial risk of harm if returned home and there are no reasonable means by which the child can be

protected without removal. (§ 361, subd. (c)(1); *In re Kristin H.* (1996) 46 Cal.App.4th 1635, 1654.) The jurisdictional findings are prima facie evidence the child cannot safely remain in the home. (§ 361, subd. (c)(1); *In re Cole C.* (2009) 174 Cal.App.4th 900, 917.) The parent need not be dangerous and the child need not have been actually harmed before removal is appropriate. (*In re Diamond H.* (2000) 82 Cal.App.4th 1127, 1136; *In re Jamie M.* (1982) 134 Cal.App.3d 530, 536.)

We review the court's dispositional findings for substantial evidence. (*In re Kristin H.*, *supra*, 46 Cal.App.4th at p. 1654.) In this regard, we consider the entire record to determine whether the evidence is substantial—evidence that is reasonable, credible and of solid value. (*In re S.A.* (2010) 182 Cal.App.4th 1128, 1140.) We do not pass on the credibility of witnesses, resolve conflicts in the evidence, or weigh the evidence. Instead, we draw all reasonable inferences in support of the findings, view the record favorably to the juvenile court's order and affirm the order even if other evidence supports a contrary finding. (*In re Casey D.* (1999) 70 Cal.App.4th 38, 52-53; *In re Dakota H.* (2005) 132 Cal.App.4th 212, 230.) The appellant has the burden of showing there is no evidence of a sufficiently substantial nature to support the court's findings or orders. (*In re L.Y.L.* (2002) 101 Cal.App.4th 942, 947.)

B

Here, the court's dispositional order was based on findings, supported by substantial evidence, that Makayla was at substantial risk of harm as a result of Bonnie's mental illness. Bonnie had a history of mental health issues. During the April 30 domestic violence incident with Michael, Bonnie physically pulled Makayla away from

Michael, picked up objects that she threatened to throw and was confused and talked to herself. When the police arrived, they heard plates breaking. Makayla said this caused her to be scared. She also said Bonnie and Michael often fought and she was afraid of Bonnie because she spanked her with a belt.

The social workers identified several risk factors necessitating Makayla's out-of-home placement, including Bonnie's lengthy history of substance abuse and mental illness and her prior child welfare history.³ Bonnie continued to deny she had issues with substance abuse or mental illness, she blamed Michael for her problems and she failed to recognize how her substance abuse and mental illness negatively affected her children and placed them at risk.

Bonnie asserts Makayla would not be at risk of harm in her custody because she: (1) had two negative drug tests; (2) completed a 52-week parenting class; (3) saw her psychiatrist monthly; and (4) had pleasant visits with Makayla. However, in light of Bonnie's lengthy history of substance abuse and mental illness, the two recent drug tests with negative results do not mitigate the risk to Makayla. Bonnie was untruthful about having alcohol in her home. After admitting she had used methamphetamine in 2011, Bonnie claimed she had not used drugs or alcohol for more than 10 years. Presumably, Bonnie did not consider her conviction for driving under the influence of alcohol with

³ Bonnie had 41 prior referrals with Agency, including a substantiated referral for Makayla in 2011. When Natasha and another sibling were minors, Bonnie participated in a voluntary case because she had emotionally and physically abused them. From 2006 to 2008, Michael was a dependent. Many of the same issues in these prior cases resurfaced in the current case.

Makayla in the car to be an indication she had a substance abuse problem. Bonnie's lack of honesty and insight about her problems permitted a reasonable inference that Makayla would not be safe in her care.

Although Bonnie recently completed a 52-week parenting class as a condition of probation, there was evidence she had not made progress with her course goals and was unable to implement what she had learned.⁴ Bonnie continued to engage in physical and verbal abuse of Michael in Makayla's presence, refused to accept responsibility for her actions and blamed Michael for her problems. Thus, Bonnie's participation in these classes did not deter her from placing Makayla at risk of harm.

Bonnie claims she saw her psychiatrist monthly and took Seroquel daily, thus eliminating the risk to Makayla. However, even though Bonnie was under psychiatric care and was prescribed medication for her mental illness, the fighting with Michael continued, and even escalated. Bonnie talked to herself, heard voices and was confused. She believed she was taking Seroquel to help her sleep and denied having a mental health diagnosis. Under these circumstances, Bonnie's lack of understanding of her mental health issues placed Makayla at substantial risk of harm in her custody.

Although Bonnie was having positive four-hour visits with Makayla, their time together was supervised and does not indicate Makayla could safely live with Bonnie given her ongoing mental health issues, persistent refusal to acknowledge her substance abuse history and lack of insight as to how her behavior placed her children at substantial

⁴ At the time of the April 30 domestic violence incident, Bonnie had completed 47 of the 52 classes.

risk of harm. Substantial evidence supports the court's finding Makayla would be at substantial risk of harm if returned home.

C

Bonnie asserts the protective issues as to Makayla have been resolved because Michael was no longer in the home. She also claims there were less drastic alternatives to Makayla's removal from her custody, and suggests she could have signed a safety plan with protective measures to ensure Makayla's safety at home. However, the record contains sufficient evidence that Makayla could not be protected without removing her from Bonnie's custody. As we previously discussed, Bonnie continues to deny she has mental health and substance abuse issues, she lacks insight and believes Michael is the cause of her problems, and she fails to understand how her behavior endangers Makayla. Bonnie's parenting course facilitator reported Bonnie still has work to do. From this, the court could reasonably find that returning Makayla to Bonnie's custody, even with Agency supervision and services in place, and without Michael in the home, was not a feasible alternative to removal.

II

Bonnie contends the court erred by requiring her to participate in a substance abuse treatment program as part of her case plan. She asserts: (1) there was no evidence she has a substance abuse problem as shown by her two negative drug tests; and (2) substance abuse was not a basis for juvenile court jurisdiction.

A

At the disposition hearing, the court must order child welfare services for the child and the child's parents to facilitate reunification of the family. (§ 361.5, subd. (a); *In re Christopher H.* (1996) 50 Cal.App.4th 1001, 1006.) "The court has broad discretion to determine what would best serve and protect the child's interest and to fashion a dispositional order in accord with this discretion. [Citations.] We cannot reverse the court's determination in this regard absent a clear abuse of discretion. [Citation.]" (*In re Christopher H.*, at p. 1006.)

A reunification or service plan " "must be appropriate for each family and be based on unique facts relating to that family." " [Citation.]" (*In re Kristin W.* (1990) 222 Cal.App.3d 234, 254; *In re Dino E.* (1992) 6 Cal.App.4th 1768, 1777.) The plan must be specifically tailored to the needs of the parents and designed to eliminate those conditions that led to the loss of custody. (*In re Joanna Y.* (1992) 8 Cal.App.4th 433, 438; *In re Basilio T.* (1992) 4 Cal.App.4th 155, 172.) However, the provision of services need not be limited to the allegations of the petition filed under section 300. (*In re Christopher H.*, *supra*, 50 Cal.App.4th at p. 1008.) Indeed, the court may consider any relevant evidence for disposition to help it determine how to facilitate reunification for a family and what would be in the child's best interests. (See *In re Corey A.* (1991) 227 Cal.App.3d 339, 346-347.)

B

Here, the court ordered Bonnie, as part of her case plan, to attend an initial substance abuse assessment and intake appointment at the Gifford Clinic and to comply

with the clinic's recommendations. The evidence showed Bonnie's alcohol abuse had affected her ability to properly care for her children. She had been convicted of drunk driving with Makayla in the car, and had not complied with the terms of her probation at the time the dependency petition was filed. When police officers responded to the April 30 domestic violence incident that led to the filing of the petition, they suspected Bonnie was under the influence of alcohol. Three nights earlier, Bonnie had left Michael, Makayla and a granddaughter home alone while she went to a bar to drink. During a home visit by a social worker, an open bottle of wine was found in Bonnie's living room. Bonnie claimed she had not used drugs or alcohol for more than 10 years, but there was evidence Bonnie's substance abuse history dated to 1989. She had attended five drug treatment programs in the past and admitted using methamphetamine in 2011. Under these circumstances, the court could reasonably find Bonnie's substance abuse was an obstacle to reunification, which needed to be addressed in her case plan. (*In re Christopher H.*, *supra*, 50 Cal.App.4th at p. 1008.)

Moreover, the Gifford Clinic was a program for patients, such as Bonnie, with both substance abuse and mental illness diagnoses. Thus, requiring Bonnie to be assessed for substance abuse treatment at this clinic was specifically tailored to address her particular circumstances and unique needs. (*In re Dino E.*, *supra*, 6 Cal.App.4th at p. 1777.) There was no abuse of discretion.

DISPOSITION

The judgment is affirmed.

McCONNELL, P. J.

WE CONCUR:

HALLER, J.

AARON, J.